Island Transportation Company, Inc. *and* Local 1702, United Paperworkers International Union, AFL–CIO, CLC. Case 1–CA–28866

July 13, 1992

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS DEVANEY AND OVIATT

Upon a charge and amended charge filed by the Union on November 8 and December 20, 1991, respectively, the General Counsel of the National Labor Relations Board issued a complaint on December 23, 1991, against Island Transportation Company, Inc., the Respondent, alleging that it has violated Section 8(a)(5) and (1) of the National Labor Relations Act. Although properly served with copies of the charge and complaint, the Respondent has failed to file an answer.

On June 10, 1992, the General Counsel filed a Motion for Summary Judgment. On June 11, 1992, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

Section 102.20 of the Board's Rules and Regulations provides that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. The complaint states that unless an answer is filed within 14 days of service, "all the allegations in the complaint shall be deemed to be admitted to be true and shall be so found by the Board." Further, the undisputed allegations in the Motion for Summary Judgment disclose that the General Counsel, by letter dated March 27, 1992, notified the Respondent that unless an answer was received by the close of business on April 10, 1992, a Motion for Summary Judgment would be filed.

In the absence of good cause being shown for the failure to file a timely answer,[1] we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

The Respondent, a corporation, with an office and place of business in East Freetown, Massachusetts, has been engaged in the interstate transportation of freight services. The Respondent, in the course and conduct of its business operations, annually derives gross revenues in excess of $50,000 for the transportation of freight and commodities from the Commonwealth of Massachusetts directly to points outside the Commonwealth of Massachusetts, and performs services valued in excess of $50,000 outside the Commonwealth of Massachusetts. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

The following employees of the Respondent (the unit) constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

> All full-time and regular part-time drivers, jockeys, jockey-mechanics, and mechanics employed by Respondent who service Respondent's account with Massachusetts Container Corporation in Marlboro, Massachusetts, but excluding all other employees, guards, and supervisors as defined in the Act.

Since about November 19, 1990, and at all material times, the Union has been the exclusive collective-bargaining representative of the unit within the meaning of Section 9(a) of the Act, and since then the Union has been recognized as the representative by the Respondent. This recognition has been embodied in a collective-bargaining agreement effective from November 15, 1990, through November 15, 1993 (the 1990–1993 contract).

Since about May 8, 1991, the Respondent has failed and refused to make the payments which have become due to the National Industry Union Pension Plan pursuant to article XXVII of the 1990–1993 contract, and has thereby failed and refused to bargain collectively with the Union as the representative of its unit employees in violation of Section 8(a)(5) and (1) of the Act.

[1] By letter dated January 3, 1992, the Respondent's president notified the Region in response to the complaint that the Respondent had filed for ch. 11 protection. It is well established, however, that the institution of bankruptcy proceedings does not deprive the Board of jurisdiction or authority to entertain and process an unfair labor practice case to its final disposition. *Phoenix Co.*, 274 NLRB 995 (1985). Board proceedings fall within the exception to the automatic stay provision for proceedings by a governmental unit to enforce its police or regulatory powers. See id., and cases cited therein.

CONCLUSIONS OF LAW

By failing and refusing since May 8, 1991, to make contractually required payments to the National Industry Union Pension Plan, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1), Section 8(d), and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent has violated Section 8(a)(5) and (1) by failing to make contractually required payments to the National Industry Union Pension Plan, we shall order the Respondent to make whole its unit employees by making all payments that have not been made and that would have been made but for the Respondent's unlawful failure to make them, including any additional amounts applicable to such delinquent payments as determined in accordance with the criteria set forth in *Merryweather Optical Co.*, 240 NLRB 1213 (1979). In addition, the Respondent shall reimburse unit employees for any expenses ensuing from its failure to make such required payments, as set forth in *Kraft Plumbing & Heating*, 252 NLRB 891 fn. 2 (1980), enfd. 661 F.2d 940 (9th Cir. 1981), such amounts to be computed in the manner set forth in *Ogle Protection Service*, 183 NLRB 682 (1970), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

ORDER

The National Labor Relations Board orders that the Respondent, Island Transportation Company, Inc., East Freetown, Massachusetts, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to bargain with the Union in the unit described below by failing and refusing to make contractually required payments to the National Industry Union Pension Plan:

> All full-time and regular part-time drivers, jockeys, jockey-mechanics, and mechanics employed by Respondent who service Respondent's account with Massachusetts Container Corporation in Marlboro, Massachusetts, but excluding all other employees, guards, and supervisors as defined in the Act.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Make whole the unit employees by making delinquent payments to the National Industry Union Pension Plan and by reimbursing the employees for any expenses ensuing from the Respondent's unlawful refusal to make such payments, in the manner set forth in the remedy section of this Decision and Order.

(b) Preserve and, on request, make available to the Board or its agents for examining and copying, all payroll records, social security payment records, timecards, personnel records and reports, trust fund statements, and all other documents or records necessary to analyze the amount of payments due under the terms of the Board's Order.

(c) Post at its facility in East Freetown, Massachusetts, copies of the attached notice marked "Appendix."[2] Copies of the notice, on forms provided by the Regional Director for Region 1, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(d) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

[2] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT fail and refuse to bargain with Local 1702, United Paperworkers International Union, AFL–CIO in the unit described below by failing and refusing to make contractually required payments to the National Industry Union Pension Plan:

All full-time and regular part-time drivers, jockeys, jockey-mechanics, and mechanics employed by us who service our account with Massachusetts Container Corporation in Marlboro, Massachusetts, but excluding all other employees, guards, and supervisors as defined in the Act.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL make whole our unit employees by making delinquent payments to the National Industry Union Pension Plan and by reimbursing our unit employees for any expenses ensuing from our unlawful refusal to make such payments.

ISLAND TRANSPORTATION COMPANY, INC.